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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,927	12/06/2000	Kazuhiro Kusuda	00-737	7962

7590 12/11/2002

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EXAMINER

CAPRON, AARON J

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 12/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/730,927

Applicant(s)

KUSUDA ET AL.

Examiner

Aaron J. Capron

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

MARK SAGER  
PRIMARY EXAMINER

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### **DETAILED ACTION**

This is a response to the Amendment received on October 29, 2002, in which claims 1, 5-7 and 9 were amended. Claims 1-10 are pending.

#### ***Claim Objections***

Claim 1 is objected to because of the following informalities:

Claim 1, line 16, replace the word "or" with the word "for". Appropriate correction is required.

#### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Referring to claim 1, there is insufficient antecedent basis for the limitation "the subsequent place."

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claimed invention appears to be a mathematical algorithm performing calculations or data manipulation that indicates a result which lacks providing a useful, concrete and tangible result, there from. See *State Street Bank & Trust Co. vs Signature Financial Group Inc.*, 47 USPQ 2d 1596, 1601-02 (Fed Cir 1998). Specifically, the claimed invention appears to be non-functional descriptive material that is not in combination with a computer system so as to impart functionality of steps thereto.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Algie (U.S.

Patent No. 5,564,977).

Algie discloses a gaming machine comprising a dividend determining means for determining a dividend to be paid to a player who a lottery with a predetermined probability, the lottery including a plurality of objects with predetermined probabilities of winning, and for indicating the dividend to the player, display means for providing an execution result executed by the dividend determining means to the player, the dividend determining means including setting means for setting a target payout rate and the probability of winning each of the objects and for setting odds on each of the objects based on the target payout rate and the probability of winning (Table in column 4: column 1); first correcting means for correcting the odds on the object by correcting the probability of winning of the object (4:4-67); second correcting means for correcting the predetermined odds on the object by redetermining the probability of winning based on the approximated odds and displaying the final odds obtained by the first and second correction means (Figures 4 and 5). The Examiner views the method of arranging the numbers, calculating the odds/probability of winning and determining the correct payout rate as manipulation of data which Algie clearly does to manipulate the continual display of odds that are displayed in Figure 5. The totality of bets over successive periods iteratively for each of the participants of the race, the continuation of altering the odds and displaying the odds are encompassed by Algie and is therefore treated as equivalent to the Applicants' claimed invention.

***Response to Arguments***

Applicant's arguments filed October 2, 2002 have been fully considered but they are not persuasive.

Applicants responded by including the terminology "wherein said display means displaying the final odds obtained by said first and second corrections means." However, as shown by the "Examination Guidelines for Computer-Related Inventions" found on the website [www.uspto.gov/web/patents/guides.htm](http://www.uspto.gov/web/patents/guides.htm) discusses on page 21, section iii, that "...claimed acts represent some 'significant use' of the solution, those acts will invariably impose an independent limitation of the claim... 'significant use' is any activity which is more than merely outputting the direct result of the mathematical operation." The Examiner views the special feature of displaying the final odds as outputting the direct result of the mathematical operation. Therefore, the Examiner holds that the claimed invention is an algorithm and that the display merely outputs the final odds calculation.

***Conclusion***

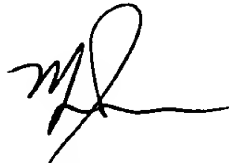
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Capron whose telephone number is (703) 305-3520. The examiner can normally be reached on M-F 8-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ajc  
December 4, 2002



MARK SAGER  
PRIMARY EXAMINER